

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ZHAOYIN WANG

Plaintiff,

v.

BETA PHARMA, INC., DON ZHANG,

AND ZHEJIANG BETA PHARMA

CO., LTD.,

Defendants.

Civil Action No. 3:14-cv-01790-VLB

January 14, 2015

RULE 26(f) REPORT OF PARTIES' PLANNING MEETING

Date Complaint Filed (state court): November 10, 2014

Date of Removal to Federal Court: December 1, 2014

Date of Appearance on behalf of defendants

Beta Pharma and Zhang: December 1, 2014

Defendant Zhejiang Beta Pharma ("ZBP") has not appeared.

Pursuant to Fed. R. Civ. P. 16(b), 26(f) and D. Conn. L. Civ. R. 16, Attorney Jonathan Katz, for plaintiff Zhaoyin Wang, and Attorney Michael Caldwell, for defendants Beta Pharma, Inc. ("Beta Pharma") and Don Zhang ("Zhang")

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(collectively, "Defendants"), conferred on January 13, 2015 for the purposes below.

I. CERTIFICATION

Undersigned counsel certify that, after consultation with their clients, they have discussed the nature and basis of the parties' claims and defenses and any possibilities for achieving a prompt settlement or other resolution of the case and, in consultation with their clients, have developed the following proposed case management plan. Counsel hereby further certify that they have forwarded a copy of this report to their clients.

II. JURISDICTION

A. Subject Matter Jurisdiction

This Court has diversity jurisdiction over Plaintiff's claims under 28 U.S.C. §§ 1332 and 1441.

B. Personal Jurisdiction

Defendants do not contest personal jurisdiction over Beta Pharma and Zhang. However, they have moved to transfer this case to the U.S. District Court for the District of New Jersey pursuant to 28 U.S.C. § 1404(a), contending that transfer is appropriate because there is currently no connection between this action and New Jersey, but substantial connections between this action and New Jersey, and that ZBP is fraudulently joined and has not been properly served. Plaintiff opposes that motion and filed opposition papers on December 24, 2014.

III. BRIEF DESCRIPTION OF THE CASE

A. Claims of Plaintiff

Plaintiff claims that defendants induced him to form a partnership with them for the purpose of forming and operating Beta Pharma Canada, which entity was formed and operated for several years. Plaintiff alleges that defendants committed actionable conduct with respect to this transaction, in part by failing to deliver plaintiff's promised compensation including salary and shares of stock in Beta Pharma; in part by transferring to plaintiff certain shares of Zhejiang Beta Pharma (a partially owned subsidiary of defendant Beta Pharma organized under the laws of the People's Republic of China) but failing to register plaintiff's shares on the books of that company, thereby depriving plaintiff of the ability to participate in the planned initial public offering of Zhejiang Beta Pharma; and in part by failing to honor its financial commitments to Beta Pharma Canada, thereby damaging the business and costing plaintiff lost profits. Plaintiff seeks money damages from Beta Pharma and Zhang under legal theories of breach of contract, fraud, negligent misrepresentation and breach of fiduciary duty.

Plaintiff also seeks a declaratory judgment from Zhejiang Beta Pharma that plaintiff owns 1% of the stock in that company.

B. Claims and Defenses of Defendants

Defendants have filed a Motion to Dismiss under Fed. R. Civ. P. 12(b)(6) directed to the Third through Eighth Counts of the Complaint, asserting that such claims are barred by the economic loss doctrine, that the claims for fraudulent misrepresentation fail to plead fraud with the required particularity, and that the

claims for breach of fiduciary duty fail to state causes of action. Plaintiff's response is not yet due. Defendants have not filed counterclaims. They deny the validity of all of Plaintiffs' claims, and reserve the right to plead all applicable affirmative defenses when they file their Answer to Plaintiff's Complaint.

C. Defenses and Claims of Third Party Defendants

Not applicable.

IV. STATEMENT OF UNDISPUTED FACTS

Counsel certify that they have made a good faith attempt to determine whether there are any material facts that are not in dispute. The parties state that the following material facts are undisputed:

1. Plaintiff Zhaoyin Wang is a resident of Quebec, Canada.
2. Defendant Beta Pharma, Inc. is a Delaware corporation with a principal place of business in Princeton, New Jersey.
3. Defendant Don Zhang is a resident of New Jersey.
4. ZBP is organized as a corporation incorporated under the laws of the People's Republic of China.

V. CASE MANAGEMENT PLAN

A. Standing Order on Scheduling in Civil Cases

The parties request modification of the deadlines in the Standing Order in Civil Cases as follows:

B. Scheduling Conference with the Court

The parties do not request a pretrial conference with the Court before entry of a scheduling order pursuant to Fed. R. Civ. P. 16(b). The parties prefer a conference by telephone in the event that such a conference is ordered.

C. Early Settlement Conference

1. The parties certify that they have considered the desirability of attempting to settle the case before undertaking significant discovery or motion practice.

2. The parties do not request an early settlement conference.

3. N/A.

4. At present, the parties do not request referral for alternative dispute resolution pursuant to D. Conn. L. Civ. R. 16.

D. Joinder of Parties and Amendment of Pleadings

1. Plaintiff should be allowed until February 12, 2015 to file any motions to join additional parties and until 30 days after the court rules on the pending Motion to Dismiss to move to amend the pleadings.

2. Defendants should be allowed until February 12, 2015 to file any motions to join additional parties. Defendants filed a Motion to Dismiss under Fed. R. Civ. P. 12(b)(6) on January 7, 2015.

E. Discovery

a. Plaintiff anticipates that discovery will be needed concerning the following subjects:

1. Defendants' relationships with Zhejiang Beta Pharma (ZBP) and their transfer of ZBP shares to plaintiff.

2. Defendants' communications with plaintiff and third parties including ZBP, its executives, and others concerning transfer to plaintiff of ZBP shares.

3. Defendants' relationships with plaintiff and with Beta Pharma Canada.

4. The historical and present capitalization of ZBP, the fair market value of ZBP shares at the present time and the ZBP initial public offering, and the value of ZBP shares at time of trial.

5. Defendants' transactions involving ZBP shares and other investors.

6. The historical and present capitalization of Beta Pharma Canada, and the work performed by that company.

7. The historical and present capitalization of Beta Pharma and the fair market value of Beta Pharma shares at the present time, and at time of trial.

8. Tax and accounting matters involving Beta Pharma, Zhang and Beta Pharma Canada.

9. Communications among defendants and their representatives concerning plaintiff, ZBP, Beta Pharma, Beta Pharma Canada, and Icotinib/Conmana.

10. The matters listed in defendants' anticipated discovery requests below.

11. Related issues.

Defendants anticipate that discovery will be needed concerning the following subjects:

- 1. Communications, transactions and other dealings between Plaintiff and Defendants from 2010 through the present.**
- 2. Communications, transactions and other dealings between Plaintiff and third parties related to Beta Pharma, ZBP, Beta Pharma Canada (BPC), or any of the events and facts that Plaintiff alleges in the Complaint.**
- 3. Communications, transactions and other dealings between Defendants and third parties related to Beta Pharma, ZBP, BPC, or any of the events and facts that Plaintiff alleges in the Complaint.**
- 4. Facts related to the document titled "Partnership Offering" that is attached to the Complaint.**
- 5. Related issues.**

In addition, the parties reserve the right to seek discovery on other issues that may arise during the course of litigation and to object to individual discovery requests as appropriate.

b. All discovery, including depositions of expert witnesses pursuant to Fed. R. Civ. P. 26(b)(4), may commence upon the filing of this report and will be completed (not propounded) by July 13, 2016. The parties require such time for discovery because, inter alia, some of the relevant witnesses and documents are in Canada and the People's Republic of China and will present

issues of travel, transportation, and language. The parties will make the initial disclosures required under Fed. R. Civ. P. 26(a)(1) no later than March 13, 2015.

c. Discovery will not be conducted in phases.

d. Not applicable.

e. The parties anticipate that Plaintiff will require a total of 6 to 10 depositions of fact witnesses, and that Defendants will require a total of 6 to 10 depositions of fact witnesses. The parties reserve their right to request to depose additional fact witnesses as needed. The depositions may commence upon the filing of this report and will be completed by January 13, 2016.

f. Plaintiff requests permission to serve up to 50 interrogatories. Defendants request permission to serve up to 50 interrogatories.

g. Plaintiff intends to call expert witnesses at trial. Plaintiff will designate all trial experts and provide opposing counsel with reports from retained experts pursuant to Fed. R. Civ. P. 26(a)(2) by February 13, 2016. Depositions of any such experts will be completed by April 13, 2016.

h. Defendants intend to call expert witnesses at trial. Defendants will designate all trial experts and provide opposing counsel with reports from retained experts pursuant to Fed. R. Civ. P. 26(a)(2) by May 13, 2016. Depositions of any such experts will be completed by July 13, 2016.

i. A damages analysis will be provided by any party who has a claim or counterclaim for damages by November 13, 2015.

j. Undersigned counsel have discussed the disclosure and preservation of electronically stored information ("ESI"), including, but not

limited to, the form in which such data shall be produced, search terms to be applied in connection with the retrieval and production of such information, the location and format of electronically stored information, appropriate steps to preserve electronically stored information, and the allocation of costs of assembling and producing such information. The parties agree as follows:

The parties anticipate that requests for electronically stored information will be made in the form of search terms and specification of applicable media. The parties will endeavor to agree upon search terms and the applicable media to be searched. Electronically stored information that is or is reasonably believed to contain information that is responsive to duly served discovery requests(s) shall be timely produced in the absence of any objection. The parties shall preserve all metadata in the form in which it is ordinarily maintained.

k. Undersigned counsel have discussed discovery procedures that minimize the risk of waiver of privilege or work product protection, including procedures for asserting privilege claims after production. The parties agree to the following procedures for the minimization of the risk of waiver of privilege or work product protection, including procedures for asserting privilege claims after production:

1. If a party inadvertently produces information or documentation subject to privilege or work product protection, the party shall provide a reasonably specific description of the documentation or information claimed to be privileged (such as date, author, recipients and subject matter) and notify its opponent of its privilege or work product claims in

writing and shall request in writing the return, sequestration or destruction of such inadvertently disclosed information or documentation. Upon receipt of such a written request, the information or documentation that is inadvertently disclosed by a party shall be promptly returned to the disclosing party, or formally segregated from the other discovery information or documentation, and cannot be used by the recipient for any purpose, pending further order of the Court.

2. Any party may file a motion with the Court to determine whether privileged information or documentation which is inadvertently disclosed may be used by the recipient or should be returned or destroyed. Any party may also file a motion with the Court for a protective or confidentiality order.

3. The parties agree to negotiate in good faith an efficient procedure for any confidentiality or related issues that may arise.

F. Dispositive Motions

Dispositive motions will be filed no later than September 13, 2016.

G. Joint Trial Memorandum

If no dispositive motion is filed, the joint trial memorandum required by the Standing Order on Trial Memoranda in Civil Cases will be filed no later than October 13, 2016. If a dispositive motion is filed, the joint trial memorandum will be filed no later than 60 days following the Court's ruling on the last outstanding dispositive motion.

H. Trial Readiness

The case shall be ready for trial 30 days following the filing of the Joint Trial Memorandum required by the Standing Orders on Trial Memoranda in Civil Cases.

As officers of the Court, undersigned counsel agree to cooperate with each other and the Court to promote the just, speedy and inexpensive determination of this action.

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